

Surplus Lines Brokers

The Office of Insurance has received several complaints and inquiries regarding the business practice by some surplus lines licensees of providing “courtesy filings” for individuals or business entities not licensed as Surplus Lines Brokers in Kentucky. This clarifies the Office’s historic position regarding that business practice. It should be noted that effective July 2002 Kentucky began issuing a license to non-resident Surplus Lines Brokers to comply with the Gramm-Leach-Bliley Act.

KRS 304.9-080 requires individuals and business entities to hold a surplus lines license before marketing those products in Kentucky:

304.9-080 Licensure requirements; forms

(1) An individual or business entity shall not sell, solicit, or negotiate insurance in this state unless the individual or business entity is licensed as the appropriate insurance producer for that line of authority in accordance with this subtitle or Subtitle 10 of this chapter.

KRS 304.10-040 requires individuals and business entities to hold a surplus lines license in Kentucky before placing business.

304.10-040 Conditions for export.

If certain insurance coverages cannot be procured from authorized insurers such coverages hereinafter designated "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus lines broker...

The insurance business practice of providing “courtesy filings” for persons that **do not** hold a surplus lines license in Kentucky violates KRS 304.9-080 (1) and KRS 304.10-040 (1).

It should also be noted that KRS 304.9-425 prohibits a licensee from paying, or accepting, anything of value relating to an insurance transaction unless the person holds the appropriate license:

304.9-425 Payment or acceptance of commission, brokerage, or other valuable consideration -- Exception.

(1) No ... surplus lines broker... shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any individual or business entity for services as an agent, surplus lines broker... within this state, unless the individual or business entity held at the time the services were performed a valid license for that line of insurance as required by the laws of this state for the services.

(2) No individual or business entity, other than an individual or business entity duly licensed by this state as [a]... surplus lines broker... at the time the services were performed, shall accept any commission, brokerage, or other valuable consideration for those services.